IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.632 of 2007

C.Karunanithi @ Salak .. Petitioner

Vs

1. State, rep. by its Secretary
   to Government, Prohibition &
   Excise Department, Secretariate,
   Chennai 600 009.

2. The Commissioner of Police/
   Detaining Authority,
   Coimbatore City. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.S.Swamidoss Manokaran

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The order dated 13.2.2007, passed by the second respondent, dubbing the petitioner herein as Goonda and directing his detention under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), is challenged in this writ petition by the detenu himself.

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2. According to the detaining authority, viz., the second respondent, the ground case is said to have taken place on 26.1.2007 at 13.30 hours on the basis of the complaint lodged by one Arumugam. According to the complainant, when he was returning on foot after visiting his friend, at Jayaram Nagar Junction, Telungupalayam Road, the detenu herein, who came behind, suddenly waylaid and threatened him brandishing a knife and snatched Rs.200/- from his shirt pocket as also his wrist watch. When the complainant raised alarm and tried to catch him with the help of the passersby, the detenu wielded his knife and after threatening them, ran away from the scene. Based on the complaint, a case was registered in Crime No.83/2007 under Sections 341, 392 read with 397 I.P.C. on the file of B10 Selvapuram Police Station and during investigation, the detenue was arrested on 27.1.2007, who gave confession admitting the above said offence and thereafter, he was produced before the learned Magistrate for judicial custody.

3. The second respondent, taking note of the above case as a ground case and finding that there are four adverse cases pending against the detenu for the offence punishable under Section 379 I.P.C., viz., at B-2 R.S.Puram Police Station in Crime No.506/04 and 1028/06, at Ukkadam Police Station in Crime NO.2024/04 and at B-10 Selvapuram Police Station in Crime NO.37/06, and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention branding him as a Goonda.

4. The main contention of the learned counsel for the petitioner/detenu assailing the order of detention is that while all the adverse cases referred to in the grounds of detention relate to the offence punishable under Section 379 I.P.C. (theft cases), the solitary instance of robbery mentioned in the ground case is not relevant for sustaining the order of detention. The learned counsel, in support of the said plea, relied upon the decision of the Apex Court in DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446].

5. We have heard learned Additional Public Prosecutor on the above said point.

6. As rightly pointed out by the learned counsel for the petitioner, it is evident that the adverse cases mentioned in the grounds of detention do not relate to any law and order problem. But, the offence said to have been committed by the detenu as per the ground case attracts the provisions of the Tamil Nadu Act 14 of 1982, as per which, the acts prejudicial to public order are "when he is engaged, or is making preparations for engaging, in any of these activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order".

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7.1. In DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], cited supra, whereunder the order of detention was based on the solitary instance of robbery, the Apex Court held as follows:-

> "... Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."

7.2. That apart, the above ratio laid down by the Apex Court was followed by a Division Bench of this Court, in which one of us (P.D.DINAKARAN, J.) was a party, in MALA v. THE SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, GOVT. OF TAMIL NADU, CHENNAI, [(2004) M.L.J. (Crl.) 306].

8. Admittedly, in the instant case, the adverse cases relate to the offence of theft punishable under Section 379 I.P.C. and the ground case relates to the offence of robbery punishable under Section 392 read with 397 I.P.C. and hence, we are of the opinion that the ratio laid down in DARPAN KUMAR SHARMA's case, cited supra, squarely applies to the present case on hand, which is also not disputed by the learned Additional Public Prosecutor.

9. Hence, applying the ratio laid down by the Apex Court in Darpan Kumar Sharma's case, cited supra, we are inclined to set aside the order of detention dated 13.2.2007. Accordingly, the order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be released forthwith, unless he is required in any other case.

sra

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government,
   State of Tamilnadu,
   Prohibition & Excise Department,
   Fort St. George, Chennai 600009.

2. The Commissioner of Police,
   Coimbatore City.

3. The Superintendent,
   Central Prison, Coimbatore.

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law & Order) Department,
   Fort Saint George,
   Chennai-600 009.

+1 cc to Mr.S.Swamidoss Manokaran, Advocate Sr.No.53601.

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